plaintiffs made no representation whatever to the defendants about the condition precedent and that it was Tan Koon Swan who somehow was able to convince Tan Sri Khoo Teck Puat that the option shares would be relisted within three months from the signing of the agreement. Furthermore, Tan Sri Khoo, in para 7 of his affidavit affirmed on 14 May 1987 admitted as follows: 'Further, as I now know, the relisting of the shares was not a strict condition precedent to the defendants' liability under the guarantee...'.

The sixth and seventh grounds of appeal can be taken together. The sixth ground was that the defendants were released from liability under the guarantee because two of the original guarantors were replaced by two new guarantors without the consent of the defendants. We agree with the learned judge that there was nothing in this point for the reasons given by him, ie the defendants were not prejudiced at all and the guarantee itself provided that such a change in the security arrangements would not be a defence to the defendants' liability as surety.

The seventh ground was that the defendants' liability under the guarantee was 22.73% of what was due or owing, and that as one of the other guarantors had already paid a certain sum to the plaintiffs under his guarantee, the defendants' liability was automatically reduced to its agreed percentage of the balance due or owing. There is no merit in this argument. The guarantee was a several guarantee for a fixed percentage of all sums due or owing by Freelin. Each of the other guarantors was also liable for his fixed percentage. All these percentages added up to 100% of the indebtedness or liability of Freelin. If this argument were correct, then the total amount recoverable by the plaintiffs under the six guarantees was dependent entirely upon how and when the guarantors would or could pay under their guarantees. It meant that the plaintiffs could never recover 100% of their exposure, which must be what they intended under the six guarantees, unless all the six guarantors honour their respective obligations at the same time. In our view, commercial transactions must be interpreted to give them commercial sense.

For the reasons given above, the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Donaldson & Burkinshaw; Drew & Napier.*

Reported by *Terence Tan Bian Chye*

Re Lim Kim Guan, ex p Four Seas Communications Bank Ltd

Re Ng Sew Eng, ex p Four Seas Communications Bank Ltd

HIGH COURT (SINGAPORE) — BANKRUPTCY NOS 3390 OF 1988 AND 3391 OF 1988
THEAN J
26 OCTOBER 1989

Bankruptcy — Bankruptcy notice — Failure to comply with — Whether notice defective — Notice based on judgment debt with interest — Failure to specify total amount of interest to be paid — Failure to specify interest rate — Bankruptcy Act 1967 [Mal], s 3(1)(i) — Bankruptcy Act (Cap 20, 1985 Ed), s 3(1)(i) — Bankruptcy Act 1924-1965 [Aust], ss 52 & 53

The two bankruptcy petitions before the court raised the same issue of law. The facts are not in dispute. The petitioner on 30 September 1988 obtained final judgment against the two debtors. Both debtors failed to satisfy the judgment. The petitioner took out two bankruptcy notices against them respectively. The debtors now contest the petitions, and the objection raised by their counsel is that the bankruptcy notice in each case is invalid in that it has not specified the precise amount of interest which the debtor is required to pay. In other words, the petitioner has not quantified the interest in a specific sum in the respective bankruptcy notices.

Held, setting aside the bankruptcy notices and dismissing the bankruptcy petitions:

(1) The requirements contemplated by the words in s 3(1)(i) of the Bankruptcy Act (Cap 20, 1985 Ed) are two-fold: first, the debtor is to pay the 'judgment debt or sum', and secondly, the debtor is to pay such debt or sum 'in accordance with the terms of the judgment'. The first requirement relates to the subject of payment — the judgment debt or sum. The second requirement relates to the judgment creditor, such as his name and capacity in which he is to receive the payment, and to the time and manner of payment — all these must be in accordance with the judgment.

(2) Case law, although not strictly on point, shows how strictly the courts have construed and treated a bankruptcy notice because of the serious consequences which ensue upon a debtor's non-compliance with the notice. A bankruptcy notice must not be calculated to mislead, embarrass or perplex the debtor. In this connection, the test is not whether the debtor has been misled, embarrassed or perplexed by the bankruptcy notice, but whether he could be so misled, embarrassed or perplexed. It is a stringent requirement that it must be specified on the face of the bankruptcy notice what precisely the debtor is required to pay in order to avoid an act of bankruptcy. The debtor ought not be embarrassed or perplexed as to what amount or how much he is required to pay to the judgment creditor.

(3) In each of the bankruptcy notices before the court, the subject of payment, ie the judgment debt or sum, consists of three components: the principal of $201,479.41; interest to the date of judgment at 3.75% pa above the petitioner's prime lending rate on the basis of a 365-day year with monthly rests; and costs. The first and third components are specific and clear enough; but the second is not. Though these words follow the terms of the judgment, it is by no means explicit and clear on the

face of the bankruptcy notice how much the debtor has to pay in terms of the amount of interest.

(4) The petitioner's prime lending rate applicable has not been specified in the notice; nor has there been set out the formula for or the manner of computing or calculating the interest 'with monthly rests'. In the circumstances, each of the debtors would or could be puzzled and perplexed as to how much he or she would have to pay to the judgment creditor to comply with the notice.

(5) If the interest is not quantified in a specific sum in a bankruptcy notice, the specific rate of interest must be specified so that on the face of the notice the amount of interest is capable of being ascertained.

(6) A bankruptcy notice is not invalid, even though the interest is not set out there in a fixed or specific sum, as long as it is capable of being calculated or ascertained by 'some formula or other means'. The 'formula or other means' of ascertaining the precise amount of interest ought to be apparent on the face of the bankruptcy notice so that on that basis the debtor could calculate and ascertain the precise amount of interest he has to pay to avoid an act of bankruptcy. It is not the obligation of the debtor to enquire from the judgment creditor the precise amount he has to pay.

(7) A judgment creditor is entitled to have a bankruptcy notice issued for the judgment debt or sum plus the interest. Since this interest accrued from the date of judgment until payment, it is not possible for the judgment creditor to quantify this amount until the date of payment.

(8) For the reasons the court has given, each of these bankruptcy notices is fatally flawed. In consequence, no act of bankruptcy has been committed by the debtors and both the bankruptcy petitions must fail and are dismissed.

(9) The court was not disposed to award to the judgment debtors the full costs of this hearing. Apart from citing the two Malaysian authorities, the court did not have the benefit of any full argument from their counsel notwithstanding that all the other authorities referred to in this judgment have been brought to his attention. In the circumstances, they should be entitled to only one-third of the costs, and the court so ordered.

Cases referred to

1 *Low Mun* v *Chung Khiaw Bank Ltd* [1988] 1 MLJ 263 (distd)
2 *Ghazali bin Mat Noor* v *Southern Bank Bhd & Ors* [1989] 2 MLJ 142 (not folld)
3 *Re Annie Lim* [1987] 2 MLJ 276 (refd)
4 *Re Thomas E Davis* [1963] 19 ABC 100 (not folld)
5 *Re O'Keefe* [1963] 19 ABC 101 (not folld)
6 *In re Howes* [1892] 2 QB 628 (refd)
7 *In re A Judgment Debtor* [1908] 2 KB 474 (refd)
8 *In re A Debtor* [1911] 2 KB 718 (refd)
9 *In re A Debtor* [1912] 1 KB 53 (refd)
10 *In re Arkell* (1889) 61 LT 90 (refd)
11 *In re HB* [1904] 1 KB 94 (refd)
12 *In re A Debtor* [1908] 2 KB 684 (refd)
13 *Re Lehmann* (1890) 62 LT 941 (folld)

Legislation referred to

Bankruptcy Act (Cap 20, 1985 Ed) s 3(1)(i)
Bankruptcy Act 1967 [Mal] s 3(1)(i)
Bankruptcy Act 1924-1965 [Aust] ss 52, 53.

Rajah Chelva Ratnam for the petitioning creditor.
Timothy Ong Kian Wei for the debtors.
Hamidah bte Ibrahim (Miss) for the Official Assignee.

Cur Adv Vult

Thean J: These are two bankruptcy petitions before me, and they both raise the same issue of law. The facts are not in dispute and are as follows.

The petitioner on 30 September 1988 obtained a final judgment in Suit No 1262 of 1988 in the High Court against the two debtors, Lim Kim Guan and Ng Sew Eng, in the following terms:

> It is this day adjudged that the second and third defendants (Lim Kim Guan and Ng Sew Eng) do pay the plaintiffs the sum of $201,479.41 plus interest thereon from 1 June 1988 to date of judgment at the rate of 3.75% pa above the plaintiffs' prime lending rate on the basis of a 365-day year with monthly rests and $700 costs.

Both the debtors failed to satisfy the judgment. On 6 December 1988, the petitioner took out two bankruptcy notices against them respectively. The material portion of each of the bankruptcy notices is as follows:

> Take notice that within seven (7) days after service of this notice on you, excluding the day of such service, you must pay to Four Seas Communications Bank Ltd of 19-25, Cecil Street, Singapore 0104, the sum of $201,479.41 plus interest thereon from 1 June 1988 to date of judgment at the rate of 3.75% pa above the plaintiffs' prime lending rate on the basis of a 365-day year with monthly rests and $700 costs as being the amount due on the judgment dated 30 September 1988 obtained by them against you in the High Court of the Republic of Singapore in Suit No 1262 of 1988 whereon execution has not been stayed, or you must secure or compound for the said sum to their satisfaction or the satisfaction of this court, or you must satisfy this court that you have a counterclaim, set-off or cross-demand against the said Four Seas Communication Bank Ltd which equals or exceeds the said sum claimed by them and which you could not set up in the action in which the judgment or order was obtained.

Both the debtors failed to comply with the requirements of the respective bankruptcy notices, and following that, the petitioner on 3 February 1989 presented these two bankruptcy petitions against them respectively; each of the bankruptcy petitions is founded on the failure by the debtor concerned to comply with the requirements of the bankruptcy notice served on him or her, as the case may be.

The debtors now contest the petitions, and the objection raised by their counsel is that the bankruptcy notice in each case is invalid in that it has not specified the precise amount of interest which the debtor is required to pay. In other words, the petitioner has not quantified the interest in a specific sum in the respective bankruptcy notices. In support, counsel relied on the two recent decisions of the Supreme Court in Malaysia, namely, *Low Mun* v *Chung Khiaw Bank Ltd*[1] and *Ghazali bin Mat Noor* v *Southern Bank Bhd & Ors*.[2] In *Low Mun*[1] the bankruptcy notice served on the debtor required payment to the petitioning creditor of a principal sum of $2,325,000 'together with interest thereon at a rate of 3% above the judgment credi-

tors' base rate of interest per annum with monthly rests in respect of the sum of $2,100,000 and yearly rests in respect of the sum of $200,000 from 27 February 1983 until payment thereof and costs to be taxed claimed by them ...' At the date of the issue of the bankruptcy notice the base lending rate of the judgment creditor was not available and the costs of the proceedings had not been taxed. It was only after the issue of the bankruptcy notice, ie when the bankruptcy petition was presented, that the creditor was able to ascertain and determine the base lending rate at 10.25% pa and to quantify the costs at $9,880.50 which had by then been taxed. The Supreme Court held that the bankruptcy notice was bad as it demanded payment of the whole judgment debt when parts of the debt had not been or could not be quantified. Mohamed Azmi SCJ in delivering the judgment of the court said, at p 265:

> Clearly, the bankruptcy notice was bad in law as it contained demand for payment of the whole judgment debt within seven days when parts of the whole debt had not been or could not be quantified, and as such were incapable of being made the subject of execution, and consequently incapable of being complied with. Non-compliance with the demand to pay such unascertained sums cannot constitute an act of bankruptcy. The demand for payment in the notice must not only be quantified but must also be the correct sum owing as at the date of the notice.

In *Ghazali*,[2] there were five appeals before the Supreme Court, and they raised the same question touching on the five bankruptcy notices respectively which were the subject of the appeals. Each of the bankruptcy notices required payment of a principal sum together with interest at a specified rate from a certain date to the date of 'realization' or 'settlement'. It was held that for a bankruptcy notice to be valid it should state the exact amount due as at the date of the bankruptcy notice and that the judgment debtor must know the exact amount he had to pay to avoid bankruptcy. As the interests payable had not been quantified in all the five cases, the court held that all the bankruptcy notices were invalid and consequently all subsequent proceedings were a nullity. Harun SCJ arrived at this conclusion relying on the judgment of Mohamed Azmi SCJ in *Low Mun*.[1]

The Bankruptcy Act 1967 of Malaysia, on the basis of which *Low Mun*[1] and *Ghazali*[2] were decided, is in pari materia with our Bankruptcy Act (Cap 20, 1985 Ed) ('the Act'), and s 3(1)(i) of the Malaysian Act (save for the presence of a proviso at the end thereof and other differences, which are not material here) is identical with s 3(1)(i) of our Act. It was therefore urged upon me strongly by counsel for the debtors that I should follow these two decisions.

Counsel for the petitioner argued that *Low Mun*[1] was distinguishable from the cases before me; in that case both the interest and the costs had not been ascertained at the date of the bankruptcy notice, which he said was not the position with reference to the two bankruptcy notices here. As for *Ghazali*,[2] he submitted that it was not correctly decided and I should not follow it. He contended that the issue really turned on the construction of the words in s 3(1)(i) of the Act, namely, the requirement on the part of the judgment debtor to pay the judgment debt or sum 'in accordance with the terms of the judgment'. As the material portion of each of the bankruptcy notices followed the terms of the judgment, the bankruptcy notices in each case conformed to the requirements of s 3(1)(i).

Counsel further relied on *Re Annie Lim*,[3] a decision of the High Court in Singapore. There, the relevant facts were similar to those in the cases before me. The bankruptcy notice required payment of three principal sums; the first principal sum 'with interest accruing at the rate of 1.5% pa over the applicable Singapore Inter-Bank Offer Rate ('SIBOR') from 24 October 1984 until payment'; the second principal sum 'with interest accruing at the rate of 2% pa over Societe Generale's [the petitioning creditor's] prevailing prime lending rate from 24 October 1984 until payment', and the third principal sum 'with interest accruing at a rate of 3% pa over the Societe Generale's [the petitioning creditor's] prevailing prime lending rate from 24 October 1984 until payment'. It was held by Chan Sek Keong J that as the bankruptcy notice followed the terms of the judgment it was valid, and though the interest was not set out in a fixed sum it was capable of being calculated or ascertained by some formula or other means. He said, at p 278:

> A bankruptcy notice must be in the prescribed form, with such variations as circumstances may require (see r 92 of the Bankruptcy Rules), requiring the debtor to pay the judgment sum ordered to be paid in accordance with the terms of the judgment or order. This is exactly what the creditor did. His bankruptcy notice follows exactly the terms of the judgment: see s 3(1)(i) of the Bankruptcy Act (Cap 18, 1970 Ed). In my view a bankruptcy notice which follows precisely the terms of a judgment, as in this case, is valid even though the interest is not claimed as a fixed sum therein so long as it is capable of being calculated or ascertained by some formula or other means. The applicant complains that she did not know what sum to pay under the judgment. The short answer is that she would have found out if she had written to the creditor for the exact amount payable under the judgment. The authorities cited by counsel for the applicant do not assist him in this matter as they concern bankruptcy notices where the amount required to be paid was in excess of the amount of the final judgment. In the present case the real complaint is not that the bankruptcy notice required payment of an amount in excess of the final judgment but that the final judgment was for an unascertained sum which was also in excess of the amount owing by the applicant in that the final judgment carried interest on the judgment amount in excess of the statutory rate of interest.

I have referred both counsel to two Australian cases which decided the same point along the line of *Ghazali*.[2] The first

is the case of *Re Thomas E Davis*[4] where the registrar of the Federal Court of Bankruptcy submitted to the court for an opinion the question whether a proposed bankruptcy notice should be issued at the instance of the Deputy Commissioner of Taxation who had obtained a judgment against the debtor in the Supreme Court of New South Wales. In the notice the debtor was required to pay a specified sum of money (the sum under a judgment) together with interest at the rate of 5% pa from the date of the judgment to the date of payment thereof, the precise sum of interest not having been calculated and specified in the notice. Clyne J held that the bankruptcy notice was 'perplexing and [was] an embarrassment to the debtor; the debtor, if able to pay, [was] not obliged to calculate and ascertain the amount of interest which must be paid by him to his creditor'. The next case is *Re O'Keefe*[5] in which a bankruptcy petition was presented against the debtor founded on his non-compliance of the bankruptcy notice as an act of bankruptcy. The notice required the debtor to pay within 14 days to the creditor the judgment debt 'together with interest thereon at the rate of 5% pa from the date of judgment until date of payment'. The same judge, Clyne J, held that the bankruptcy notice did not comply with the conditions essential to the validity of a bankruptcy notice and was therefore invalid; he also refused leave to the creditor to amend the bankruptcy notice. He said, at p 103:

> In the present case the debtor could, I think, be misled in not realizing that the interest he is required to pay must be paid within 14 days after service of the notice of him. In my opinion, when a judgment creditor seeks the issue of a bankruptcy notice, he must state specifically therein the amount which the debtor is required to pay to the creditor. If he claims the payment of interest upon his judgment he must specify the amount of such interest. It is not the obligation of the debtor to calculate the interest which the judgment creditor calls upon him to pay: to make specific something unspecified.

The relevant statutory provisions applicable to the two cases are ss 52 and 53 of the Australian Bankruptcy Act 1924-1965, which, so far as relevant, are as follows:

> 52 A debtor commits an act of bankruptcy in each of the following cases: ...
>
> (j) If a creditor has obtained a final judgment or final order against him for any amount, and execution thereon not having been stayed, has served on him in Australia or, by leave of the court, elsewhere, a bankruptcy notice under this Act, and the debtor does not, within seven days or such time as is prescribed after service of the notice in Australia, or within the time limited in that behalf by the order giving leave to effect the service elsewhere, either comply with the requirements of the notice, or satisfy the court that he has a counterclaim, set-off, or cross-demand which equals or exceeds the amount of the judgment debt, and which he could not set up in the action or proceeding in which the judgment or order was obtained.
>
> 53 A bankruptcy notice under this Act shall be in the prescribed form, and shall require the debtor to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order, or to secure or compound for it to the satisfaction of the creditor or the court, and shall state the consequences of non-compliance therewith, and shall be served in the prescribed manner:
>
> ...

These statutory provisions, so far as relevant, are in substance no different from s 3(1)(i) of our Act.

Re Annie Lim[3] is therefore at variance with the Malaysian and the Australian authorities. In view of these conflicting authorities it is necessary to consider the question afresh and examine the relevant provision of the Act. The relevant provision is s 3(1)(i) which is as follows:

> 3(1) A debtor commits an act of bankruptcy in each of the following cases:
>
> (i) if a creditor has obtained a final judgment or final order against him for any amount and execution thereon not having been stayed has served on him in Singapore, or by leave of the court elsewhere, a bankruptcy notice under this Act requiring him to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order, or to secure or compound for it to the satisfaction of the creditor or the court, and he does not within seven days after service of the notice in case the service is effected in Singapore, and in case the service is effected elsewhere then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the court that he has a counterclaim, set-off or cross-demand which equals or exceeds the amount of the judgment debt or sum ordered to be paid and which he could not set up in the action or proceeding in which the judgment or order was obtained.

For my purpose, the words of critical importance in this paragraph are these, namely, 'a bankruptcy notice under this Act *requiring him [the debtor] to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment*'. (Emphasis added.)

It seems to me that the requirements contemplated by these words are two-fold: first, the debtor is to pay the 'judgment debt or sum', and secondly, the debtor is to pay such debt or sum 'in accordance with the terms of the judgment'. The first requirement relates to the subject of payment — the judgment debt or sum. The second requirement relates to the judgment creditor, such as his name and capacity in which he is to receive the payment, and to the time and manner of payment — all these must be in accordance with the judgment. The question is to what extent must these requirements be spelled out in the bankruptcy notice. In so far as the subject of payment is concerned, there is hardly any authority (apart from the five cases cited) as to what specifically should be spelled out in the bankruptcy notice; the reason is probably that in most cases merely setting out the judgment debt or sum does not give rise to any contention. As regards the second

requirement, authorities there are abundant touching on various aspects of such requirement. Though they are not strictly in point, it would be helpful to examine some of these cases to see how the courts have approached the problem.

In *In re Howes*,[6] a final judgment was obtained against the debtor for payment of a certain sum to the plaintiffs who were described 'the Rev Nathaniel Thomas Hughes and others'; but the bankruptcy notice taken out by the plaintiffs required the debtor to pay the judgment sum to 'the Rev Nathaniel Thomas Hughes and others (trustee of the charity known as St John's Hospital, Northampton)'. It was held by the Court of Appeal that the bankruptcy notice did not follow the terms of the judgment. Lord Esher MR said at p 631:

> It is said that the bankruptcy notice follows the terms of the judgment. In my opinion it does not, in the sense in which it ought to follow them. It has made an addition to the judgment which, although it may in law be mere surplusage, is well calculated to perplex the judgment debtor.
>
> The judgment was recovered by 'the Rev Nathaniel Thomas Hughes and others'; the bankruptcy notice requires the debtor to pay 'to the Rev Nathanial Thomas Hughes and others (trustees of the charity known as St John's Hospital, Northampton).' This, as it seems to me, so far alters the character of the creditors as described in the judgment as to be extremely likely to perplex the judgment debtor. The bankruptcy notice is not, therefore, 'in accordance with the terms of the judgment.'

In *In re A Judgment Debtor*,[7] two partners of a firm, William Paye and William Skipp trading as Hertingfordbury Brick Company obtained a judgment against a debtor. Subsequently, the judgment sum not being fully paid, they issued a bankruptcy notice against the debtor requiring him to pay the balance of the judgment sum to William Paye and William Skipp of their respective private addresses. The Court of Appeal, by a majority, held that the bankruptcy notice being not in accordance with the terms of the judgment was calculated to embarrass the debtor and was bad. Cozens-Hardy MR said, at p 477:

> The notice requires that payment should be made to them, not as partners, not as trading as the Hertingfordbury Brick Company, but as individuals living in different countries, although I attach no importance to that. In short, it requires and exacts payment to two individuals, whereas by the judgment payment to one of them is all that the law required. In my opinion that is not in accordance with the terms of the judgment.

And later, after having referred to *In re Howes*,[6] he said, at p 478:

> Here I think the notice was very much more calculated to puzzle and perplex the debtor, because the debtor was told that he must pay two people when he was under no obligation to pay more than one. That does seem to me to be a substantial matter — 'substantial,' I mean, in the sense in which it is right to use that word when dealing with such a technical matter as a bankruptcy notice. This is in substance the view that was taken by the learned registrar; I think it is right and that this appeal fails.

In *In re A Debtor*,[8] a bankruptcy notice which required the debtor to pay the judgment debt to the judgment creditor 'or their solicitors' and which contained a statement that the solicitors were authorized to receive payments was held not a bankruptcy notice 'requiring the debtor to pay the judgment debt in accordance with the terms of the judgment'. Cozens-Hardy MR said, at p 723:

> The question is whether that is in any reasonable sense of the word a notice requiring the debtor to pay the judgment debt in accordance with the terms of the judgment. In my opinion it is not. It is idle for a solicitor to say, 'I have authority to receive this money due to my clients, and you must please pay it to me.' That is not in accordance with the judgment at all. That seems to me to be imposing upon the debtor a state of circumstances which he ought not to be called upon to consider.

Lastly, in *In re A Debtor*,[9] a bankruptcy notice requiring payment of a judgment sum to the creditor outside the jurisdiction was held not to be in accordance with the term of the judgment; the obligation of the judgment debtor was to pay the judgment creditor within the jurisdiction.

All these cases show how strictly the courts have construed and treated a bankruptcy notice because of the serious consequences — the courts have called them 'penal consequences' or 'quasi-penal consequences' — which ensue upon a debtor's non-compliance with the notice. A bankruptcy notice must not be calculated to mislead, embarrass or perplex the debtor. In this connection, the test is not whether the debtor has been misled, embarrassed or perplexed by the bankruptcy notice, but whether he could be so misled, embarrassed or perplexed.

I now turn to the question as to what ought to be specified in the bankruptcy notice to comply with the first requirement, ie 'judgment debt or sum' which the debtor is called upon to pay. There are three cases which I find are of assistance.

The first is *In Re Arkell*[10] where a suit was commenced by B against Arkell in the Probate Division of the High Court to propound a will. Judgment was obtained by B in favour of the will and Arkell was condemned in costs to C, the solicitor for B. The costs were not paid, and B took out a bankruptcy notice requiring payment of the amount of costs to B. It was held first that that order for payment of costs was not a final judgment and, secondly, that even if it were, the bankruptcy notice did not comply with the terms of the judgment: it required payment to B. Field J said, at p 91:

> This is a serious matter, and it is necessary for us to see what is required before a man can be made bankrupt. It is not sufficient that he has not complied with a judgment; it must be a final judgment whereon execution has not been stayed. That is not all, for the debtor must have had an opportunity of securing or compounding for the debt, and *he must know*

who is the man to whom the money is to be paid, whether it can safely be paid to him, and the amount. We were referred to two cases in which amendments were allowed, both of which are distinguishable. It seems to me that a notice must be formally complied with on account of its highly consequential character to a man, and that a creditor is bound to give full information as to who it is that is enforcing it. (Emphasis added.)

Cave J said, at p 91:

It ought to be made perfectly plain what a man has got to do when served with a notice in order to avoid being made bankrupt, and it ought not to be necessary for him to go and make inquiries. On these grounds it seems to me that the notice does not comply with sufficient accuracy with the statute and the form, and so the receiving order must be set aside. (Emphasis added.)

The second is the case of *In re HB*.[11] There, the creditor obtained a judgment against the debtor but agreed by a separate agreement to payment of the judgment sum by instalments. The debtor subsequently defaulted in payment of some of the instalments and the creditor took out a bankruptcy notice requiring payment, not of the whole judgment sum, but of the outstanding instalments then due under the agreement. It was held that the notice was bad as it did not require payment of the judgment debt 'in accordance with the terms of the judgment'. Romer LJ in the course of his judgment, said, at p 103:

The judgment is in the ordinary form for a specified sum, and does not, on the face of it, require payment of the amount of the judgment debt by instalments.

Now I think it is clear that, when you have a judgment in the form that we have here, a bankruptcy notice under the Act must require payment of a sum alleged to be due according to the terms of the judgment — that is to say, *it must state the amount that is claimed as remaining unpaid on the judgment debt. Clearly, in a bankruptcy notice the debtor is entitled to see from the notice exactly what is claimed to be due on the judgment debt.* No doubt a sum might be claimed which is less than the real amount due, and that would not of course be fatal to the notice so long as the notice made it clear that nothing more was claimed to be due on the judgment beyond the amount specified in the notice. But a notice to pay part of a judgment debt, leaving any balance that may be due to be subsequently claimed, is, to my mind, clearly bad. (Emphasis added.)

The third case is *In re A Debtor*.[12] There, a bankruptcy notice which claimed an amount in excess of the amount actually due from the judgment was held by the Court of Appeal to be defective. The facts were of course different from those in the cases before me; but it is of great interest to see how two of the judges approached the problem. Farwell LJ in holding that the inclusion of an excess amount was not a formal defect which the court would rectify, said, at pp 689-690:

I cannot think it is a mere formal defect to include in a bankruptcy notice not only the amount payable under the judgment, but also a sum which is not due and owing at all, and *which the debtor has no means of seeing on the face of the notice is not due and owing. In re Johnson* (1884) 25 Ch D 112 was a different case, inasmuch as upon the notice and the schedule combined it was plain that the right amount of the debt could be ascertained, although in the body of the notice the wrong amount was stated. Cotton LJ there said: 'In my opinion the error in the statement of the debt in the present case was simply a 'formal defect', and I am satisfied that no injustice whatever has been caused to the appellant by it. He had the means of correcting the error and no injustice has been done to him.' *I take that to mean that on the face of the document read as a whole the debtor could see the mistake for himself, and therefore no injustice was done. In this case there is nothing whatever upon the face of the notice to tell one that the interest has been wrongly calculated and that too much has been asked.* (Emphasis added.)

Kennedy LJ who expressed the same opinion said, at p 691:

The only way in which it is suggested that the decision appealed from can be supported is by holding *that a misstatement in the bankruptcy notice of the amount due, which on the face of the document there is certainly no opportunity of the debtor seeing to be merely a slip,* is either a formal defect or an irregularity within s 143, sub-s 1, of the Bankruptcy Act 1883. To my mind a formal defect, with all respect to the judges who decided *In re Bates* 4 Morr 192, cannot include a misstatement as to the amount upon which the creditor bases his claim; and such a misstatement certainly is not an irregularity. In *In re Johnson* (1884) 25 Ch D 112, which was a decision under the Bankruptcy Act 1869, s 82, which was in substance the same as s 143, sub-s 1, it was pointed out that, though it was true that there was in the body of the notice a mistake as to the amount due under the judgment, it was obviously a clerical mistake — £24 for £74 — because the notice went on to say 'being the sum claimed of you by him according to the particulars annexed,' and those particulars correctly stated the amount of the debt. That was a mere clerical error. It was a defect in form and not in substance, and a *defect which could not mislead or embarrass the debtor, because he could see on the face of the document what was the nature of the claim and what was the amount which was really claimed from him.* (Emphasis added.)

It seems to me that the two judges in that case were of the view that, if on the face of the bankruptcy notice it was apparent that there was an error from which the debtor could see and ascertain the actual amount due which he was required to pay, then such an error would be a formal defect which the court could remedy.

The passages of the judgments in the three cases which I have underscored are obiter dicta; however, they do serve to show the stringent requirement to specify on the face of the bankruptcy notice what precisely the debtor is required to pay in order to avoid an act of bankruptcy. The debtor ought not be embarrassed or perplexed as to what amount or how much he is required to pay to the judgment creditor.

Turning now to the two bankruptcy notices before me. In each of them, the subject of payment, ie the judgment debt or sum, consists of three components: (i) the principal of $201,479.41; (ii) interest from 1 June 1988 to the date of judgment at the rate of 3.75% pa above the petitioner's prime lending rate on the basis of a 365-day

year with monthly rests; and (iii) costs of $700. The first and third components are specific and clear enough; but the second is not. Though these words follow the terms of the judgment, it is by no means explicit and clear on the face of the bankruptcy notice how much the debtor has to pay in terms of the amount of interest. The petitioner's prime lending rate applicable has not been specified in the notice; nor has there been set out the formula for or the manner of computing or calculating the interest 'with monthly rests'. In the circumstances, each of the debtors would or could be puzzled and perplexed as to how much he or she would have to pay to the judgment creditor to comply with the notice. Each of them would not be able to ascertain from the bankruptcy notice the precise amount he or she has to pay. They or either of them could, of course, get in touch with the judgment creditor and find out the precise amount; but they are under no obligation to do that. Their obligation is to pay the judgment debt or sum in accordance with the terms of the judgment. In my opinion, if the interest is not quantified in a specific sum in a bankruptcy notice, the specific rate of interest must be specified so that on the face of the notice the amount of interest is capable of being ascertained.

I respectfully agree with Chan Sek Keong J that a bankruptcy notice is not invalid even though the interest is not set out there in a fixed or specific sum so long as it is capable of being calculated or ascertained by 'some formula or other means'. The point on which my view differs from his is this. Chan Sek Keong J appeared to be of the opinion that if 'the formula or other means' for calculating the interest is not apparent on the face of the bankruptcy notice the debtor could obtain the precise amount from the judgment creditor. My opinion, on the other hand, is that the 'formula or other means' of ascertaining the precise amount of interest ought to be apparent on the face of the bankruptcy notice so that on that basis the debtor could calculate and ascertain the precise amount of interest he has to pay to avoid an act of bankruptcy. It is not the obligation of the debtor to enquire from the judgment creditor the precise amount he has to pay.

I now revert to the Malaysian and Australian authorities. *Low Mun*[1] is clearly distinguishable from the cases before me. In that case, at the date of the issue of the bankruptcy notice the base lending rate of the judgment creditor was not available; and therefore the amount of interest was not ascertained; nor had the costs been taxed. Mohamed Azmi SCJ said, at p 264:

> The bankruptcy notice in this case neither specified the bank's base lending rate on which the interest payable should be calculated in accordance with the terms of the judgment, nor quantified the taxed costs. The reason for the omission was simply that at the time of issue of the notice, the base lending rate was not available and the costs of the proceedings had not been taxed.

The bankruptcy notice therefore contained parts of the judgment debt or sum which had not been ascertained and on that basis the bankruptcy notice was bad. *Ghazali*[2] went further than *Low Mun*[1] and clearly is an authority for the proposition that a bankruptcy notice that states the specific rate of interest payable but does not quantify the amount of interest is bad. So also are the two Australian cases, *Re Thomas E Davies*[4] and *Re O'Keefe*.[5] In all those cases, specific or fixed rates of interest were set out in the respective bankruptcy notices and the amounts of interest were easily calculable and were capable of being ascertained on the face thereof. In each of such cases I do not see how a debtor on receipt of such a bankruptcy notice could possibly be embarrassed or perplexed. For this reason, I am not inclined to follow the decisions in these cases. In my opinion, if the specific rate of interest is stated in a bankruptcy notice, the amount of interest is capable of being ascertained, and a debtor can calculate and ascertain the amount of interest he is required to pay to the judgment creditor.

In practically most, if not all, the full amount of interest to which a judgment creditor is entitled cannot be set out in a specific sum. A judgment carries the statutory interest at the rate of 8% pa from the date of judgment to the date of payment. A judgment creditor is entitled to have a bankruptcy notice issued for the judgment debt or sum plus the interest: see *Re Lehmann*.[13] Since this interest accrued from the date of judgment until payment it is not possible for the judgment creditor to quantify this amount until the date of payment. In my opinion, in such a case, spelling out the specific rate of interest on the face of the bankruptcy notice will suffice; that would enable the debtor to compute and determine correctly what he has to pay.

For the reasons I have given, each of these bankruptcy notices is fatally flawed. In consequence, no act of bankruptcy has been committed by the debtors and both the bankruptcy petitions must fail and are dismissed.

On the question of costs, I am not disposed to award to the judgment debtors the full costs of this hearing. Apart from citing the two Malaysian authorities, I have not had the benefit of any full argument from their counsel notwithstanding that all the other authorities referred to in this judgment have been brought to his attention. In the circumstances, they should be entitled to only one-third of the costs, and I so order.

Petitions dismissed.

Solicitors: *Tan, Rajah & Cheah; Kang & Ong Associates.*

Reported by *Terence Tan Bian Chye*